

Book Symposium The Electronic Silk Road: Connecting dots in a world of bits

by Mira Burri

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In early October this year the **World Trade Organization (WTO)** held its annual Public Forum typically devoted to topics that are key to the world trading system and particularly high on the agenda of the community of the **WTO's 159 Members**. The theme of this year's edition was uniquely framed under '**Expanding Trade through Innovation and the Digital Economy**'. To some observers, the topic appeared somewhat detached from the WTO's core mandate and daily business and distant from burning concerns, such as financial crisis responses, poverty or other development-oriented actions that demand the concerted effort of the global community.

Yet, the casual observer may be mistaken – at least in two aspects. The first is more evident and has to do with the deep impact that digital technologies, and specifically the Internet, have had and continue to have upon numerous facets of societal life. The associated transformations range from the trivial to the momentous – from online shopping, through the emergence of global value chains, to the very ways we work and write, create, distribute and access information – bringing distant geographical locations within instantaneous reach, millions of people organized within hours, encyclopaedias and virtual libraries produced on a collaborative basis. The world of brick-and-mortar trade, of freighter shipments, border inspections, duties and stamps, has also been thereby profoundly changed. For the first time is trade in services unleashed on a global scale, and this definitively goes beyond the classic 'the world is flat' example of outsourcing call-centres to India.

The second aspect is more illusive and possibly escapes a clear-cut answer. It has to do with the regulation, or to put it more broadly – with the governance, of the so emerged world of cyber-trade. Who, if anyone, is in charge of it? Does jurisdiction matter and if yes, how does it matter? And then also and more fundamentally, is this cyber-trade, as an extreme and sweeping expression of globalization, something that we should cherish and foster, or rather restrain in order to preserve non-economic and possibly more critical interests, such as national security, freedom of speech, and privacy – both in the online and in the offline spaces?

Questions abound and the answers have been few so far. This is not to say that the regulatory entrepreneurs of the day, still primarily centred around the nation state, have not reacted at all. Indeed, digital technologies and the transformations induced therewith have triggered multiple regulatory responses. They affect to varying degrees the existing regimes for media and telecommunications, consumer and intellectual property rights protection, to mention but a few of the relevant issue-areas. National policies were the first to be redesigned, but because of the inherent 'globalness' of the digital environment, some solutions needed to be situated at the international level – either framed as an add-on to existing agreements (such the **Internet Treaties** adopted in 1996 under the World Intellectual Property Organization, WIPO) or as entirely new institutional solutions (such as the Internet Corporation for Assigned Names and Numbers, **ICANN**).

Contextualizing the impact of the digital (r)evolution, it should be underscored that whereas it is evident that digital technologies have had an impact on the economy as well as on social and cultural practices, they have at least as strongly affected the law and patterns of governance in general. Legal institutions face various challenges, related, amongst other things, to design, enforcement, and linkage to social norms. Overall, 'older', 'analogue' institutions have grappled and often failed to master the multi-faceted issues of the Internet, and the WTO is a case in point.

While cyber-trade still thrives in this environment of legal uncertainty and considerable

inconsistencies, we observe a deterioration of some public spaces and lower prioritization of public objectives, when strong private commercial interests are at play, such as most tellingly in the field of copyright. Although less publicized, private ordering has increasingly taken hold and captured through contracts spaces, which were previously regulated by public law – for instance, in virtual worlds and social networking sites. Overall, we are faced with a radically ‘messy’ governance landscape with many and overlapping institutions and actors of state and non-state nature, the effects of whose actions transcend national boundaries and cannot be neatly contained and controlled.

Few are the people who grasp this vast and rapidly changing landscape with its multiple implications. Even fewer are the ones who can chart a way forward. Anupam Chander with his recent book ‘The Electronic Silk Road’ does both.

Chander powerfully argues that we should embrace the unprecedented opportunity offered by technological progress and dismantle the logistical and regulatory barriers to ‘net-work trade’ – a term coined by the author to signify the new type of services trade brought about by the digital revolution. At the same time, Chander clearly identifies the legal challenges along the way and exposes the need to attain a balance within the system in that public policy objectives cannot be easily evaded through a mere jurisdictional sleight of hand or keystroke.

In an intellectually bold and innovative manner, Chander seeks to offer principles to free trade but protect law. His framework for ‘Trade 2.0’ is grounded in two guiding principles: technological neutrality and dematerialization. Technological neutrality is broadly conceived and mobilized to reject attempts to discriminate against net-work trade plainly because of its electronic nature. Equally important, the dematerialization principle fosters states to reduce barriers to digital trade by making physical presence unnecessary for purposes of authentication, notification, certification, inspection, and even dispute resolution.

The freeing of trade is matched by a batch of principles of regulating trade that are meant to ensure balance, provide for security and trust in cyberspace. To curtail the race to the deregulated bottom, Chander suggests the necessity of legal ‘glocalization’ – i.e., requiring global services to conform to local rules, where both the rules and their assertion to a particular transaction are consistent with international legal norms. In that, glocalization rejects protectionism, which has in fact only proliferated in cyberspace, yet maintains local safeguards over culture and security, demand for which is strong in national and sub-national constituencies. In addition and in order to disrupt the race to the oppressive bottom, Chander argues that companies engaged in cyber-trade should follow at a minimum a policy of ‘do no evil’, and make an effort to comport with human rights law, thereby counteracting to authoritarian regimes and their repressing practices.

From a bird’s eye view and thinking about the overall contribution of the book, it does make an absolutely important argument about the changing nature of trade in the digital networked environment – a reality that has not been sufficiently recognized even by those who create and manage the rules of global trade, at home and on the international scene. In an intellectually interesting and compelling manner, the book situates contemporary practices of online trade into a broader contextual framework and puts forward possible avenues to address the governance of burgeoning cyber-trade in a sustainable and future-oriented way. It connects the dots in a world of bits that flow without boundaries to create a template for the future of regulating digital trade – not only in the sense of liberalizing it but also in the sense of ensuring a balance between economic and non-economic interests and values.

As a mixture of international trade law and cyberlaw with interdisciplinary insights on the effects of globalization and the impact of digital technologies, Chander’s book makes a critically important contribution to bridging so far disconnected discourses and attempting to link discussions evolving only in closed technical communities, as the WTO Public Forum revealed yet again. Undoubtedly, it will take some time for the relevant communities to understand all the complexities, the

opportunities and risks of cyberspace and of digital trade as one element of it. Chander has already done a superb job in highlighting those in a highly readable and stimulating format.



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